# United States Department of Labor
# Employees' Compensation Appeals Board

| | | |
|---|---|---|
| **S.J., Appellant** | ) | |
| **and** | ) | **Docket No. 18-0966** |
| | ) | **Issued: September 20, 2019** |
| **DEPARTMENT OF THE NAVY, U.S. NAVAL HOSPITAL, Patuxent River, MD, Employer** | ) | |

*Appearances:*
*Alan J. Shapiro, Esq.*, for the appellant[1]
*Office of Solicitor*, for the Director

*Case Submitted on the Record*

## DECISION AND ORDER

Before:
CHRISTOPHER J. GODFREY, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

### ***JURISDICTION***

On April 10, 2018 appellant, through counsel, filed a timely appeal from a February 1, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act[2] (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

[1] In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

[2] 5 U.S.C. § 8101 *et seq.*

## ***ISSUE***

The issue is whether appellant has met her burden of proof to establish more than eight percent permanent impairment of the left wrist, for which she previously received a schedule award.

## ***FACTUAL HISTORY***

On September 17, 1992 appellant, then a 42-year-old medical records clerk, filed a traumatic injury claim (Form CA-1) alleging a left wrist injury on September 16, 1992 as a result of "pull[ing] out about four or five medical records with left hand" while in the performance of duty. OWCP accepted the claim for left ganglion cyst of synovium, tendon, and bursae; other tenosynovitis of left hand and wrist; and other synovitis and tenosynovitis, left. On September 14, 1996 it accepted appellant's claim for a recurrence of disability and OWCP expanded the accepted conditions to include trigger finger (acquired), left.[3] OWCP later authorized an October 12, 2009 left wrist arthroscopy and left carpal tunnel surgery and then expanded the claim to include carpal tunnel syndrome, left upper limb.

On April 11, 2013 appellant filed a claim for a schedule award (Form CA-7).

In support of her claim, appellant submitted a May 1, 2013 report by Dr. Stuart J. Goodman, a Board-certified psychiatrist and neurologist, who diagnosed left ganglion cyst of synovium tendon and bursa, left trigger finger, left other tenosynovitis of hand and wrist, and left other synovitis and tenosynovitis. Dr. Goodman conducted a physical examination and found that appellant had "tenderness of the left hand and wrist aggravated by movement." Appellant was otherwise alert, oriented, and coherent. Motor examination revealed strength to essentially be equal and normal throughout with tenderness due to pain and limitation of motion on the hand and wrist, left side. Dr. Goodman found that appellant continued to have left hand and wrist problems as related to her September 16, 1992 work injury and determined that she had reached maximum medical improvement (MMI). He opined that she had residual issues and was working in a light-duty status. Utilizing the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*),[4] Table 15-3, page 395 (Wrist Regional Grid), Dr. Goodman calculated that appellant had a class 0 diagnosis and assigned a grade modifier of 1 for both the functional history and physical examination. He concluded that appellant had a net adjustment of 2 and a grade E impairment, equaling five percent permanent impairment of the left upper extremity.

[3] OWCP accepted that on September 12, 2005 appellant was injured at work while reaching for a pen on her desk and her chair flipped. It assigned OWCP File No. xxxxxx002 and accepted the condition of left elbow sprain. OWCP granted appellant a schedule award for one percent permanent impairment of the left upper extremity for this condition. Under OWCP File No. xxxxxx828, OWCP accepted that on September 21, 2004 appellant was injured at work when she lost her balance stepping off the sidewalk and fell down onto her left wrist. It accepted a left wrist fracture and contusion due to the September 21, 2004 work injury and granted a schedule award for eight percent permanent impairment of the left upper extremity. Therefore the Board notes that appellant previously received nine percent permanent impairment of her left upper extremity.

[4] A.M.A., *Guides* (6th ed. 2009).

On September 12, 2015 the report of Dr. Goodman was sent to a district medical adviser (DMA) for review. No response was received.

By decision dated October 5, 2015, OWCP denied appellant's schedule award claim finding that the medical evidence of record did not establish permanent impairment of a scheduled member or function of the body. It noted that, although Dr. Goodman opined that appellant's impairment was related to the accepted September 16, 1992 employment injury, he had not described the injury. He also indicated that her current symptoms were caused by "use and overuse." OWCP, therefore, found that appellant could have developed an occupational disease caused by work activities over more than one workday or shift, which may have caused her impairment. It indicated that it had requested additional factual evidence from appellant to clarify this issue, but had not received a response.

On October 14, 2015 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

In a September 23, 2015 narrative statement, received by OWCP on October 20, 2015, appellant indicated that on September 16, 1992 she had developed swelling and pain in her left hand and wrist due to pulling records from shelves that were not easy to pull because they were stored tightly.

By decision dated April 18, 2016, an OWCP hearing representative conducted a preliminary review of the case and determined that the case was not in posture for a hearing. He found that OWCP's prior decision should be vacated and remanded for appellant's claims to be administratively combined with common claims to be followed by a *de novo* decision regarding entitlement to schedule award benefits.

OWCP administratively combined appellant's claims and referred appellant to Dr. Willie Thompson, a Board-certified orthopedic surgeon, for a second opinion evaluation to determine the nature and extent of her accepted employment-related conditions. In his September 15, 2016 report, Dr. Thompson reviewed a statement of accepted facts, history of the injury, and the medical evidence of record. He conducted a physical examination and found that there was mild limitation of motion at the wrist and there was some tenderness present. Grip strength was graded at 4+/5. There was minimal decreased sensation over the median nerve distribution to the left hand. The radial pulse was 3+ and regular. Appellant had intact skin. The Tinel's sign was negative with percussion over the median nerve. Dr. Thompson diagnosed status post left carpal tunnel release on October 12, 2009 with debridement of the scapholunate ligament. He also found that appellant suffered a fracture to the left wrist on September 21, 2004, resulting in surgery to repair the fracture. Dr. Thompson determined that appellant had reached MMI. Utilizing Table 15-23 of the A.M.A., *Guides*, he found that appellant's most impairing diagnosis was median nerve entrapment, a CDX of 1. Dr. Thompson assigned a grade modifier for clinical studies (GMCS) of 1 due to a conduction delay on an electromyography and nerve conduction velocity (EMG/NCV) studies, a grade modifier for functional history (GMFH) of 1 due to intermittent symptoms, and a grade modifier for physical examination (GMPE) of 2 due to physical findings. He concluded that appellant had a net adjustment of 4, equaling two percent permanent impairment of the left upper extremity.

On March 22, 2017 Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as a DMA, reviewed the medical evidence of record and found that Dr. Goodman's impairment evaluation could not be considered probative for the purpose of establishing a schedule award under FECA because it lacked sufficient detail to permit assignment of an impairment rating on the basis of a records review due to lack of physical examination findings. Using the findings provided by Dr. Thompson's second opinion report, the DMA concurred that appellant's most impairing diagnosis was median nerve entrapment under Table 15-23, page 449, of the A.M.A. *Guides*. He also concurred with the GMCS of 1 due to electrodiagnostic studies with delay, a GMPE of 2 due to decreased sensation, and a GMFH of 1 due to mild intermittent symptoms. Using the net adjustment formula (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), the DMA calculated that appellant had a net adjustment of (1-1) + (2-1) + (1-1) = 1, equaling a default grade C. Based on these calculations, he concluded that appellant had two percent permanent impairment of her left upper extremity.

In a May 9, 2017 addendum report, the DMA noted that appellant's date of MMI was September 15, 2016, the date of Dr. Thompson's second opinion examination and explained that since the present impairment of two percent was less than a prior overlapping award of eight percent permanent impairment of the left upper extremity on the basis of carpal tunnel syndrome, there was no basis for an increased schedule award.

By decision dated May 11, 2017, OWCP denied appellant's claim for an increased schedule award finding that the medical evidence of record was insufficient to establish greater permanent impairment than eight percent of the left upper extremity that which was previously awarded.

On May 22, 2017 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

A telephonic hearing was held on November 17, 2017. Appellant provided testimony and the hearing representative held the case record open for 30 days for the submission of additional evidence. OWCP did not receive additional evidence.

By decision dated February 1, 2018, OWCP's hearing representative affirmed the May 11, 2017 schedule award decision.

## ***LEGAL PRECEDENT***

The schedule award provisions of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.[5] However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. The A.M.A., *Guides* has been adopted by the implementing regulations as the appropriate standard for

[5] 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

evaluating schedule losses.[6] As of May 1, 2009, the sixth edition of the A.M.A., *Guides* is used to calculate schedule awards.[7]

The sixth edition of the A.M.A., *Guides* provides a diagnosis-based method of evaluation utilizing the World Health Organization's International Classification of Functioning, Disability and Health (ICF).[8] Under the sixth edition, the evaluator identifies the impairment for the CDX condition, which is then adjusted by grade modifiers based on GMFH, GMPE, and GMCS. The net adjustment formula is (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX).[9] Evaluators are directed to provide reasons for their impairment rating choices, including the choices of diagnosis from regional grids and calculations of modifier scores.[10]

The A.M.A., *Guides* specifically indicates that, if multiple simultaneous neuropathies occur in the same limb, both impairments may be rated, and the nerve qualifying for the larger impairment is given the full impairment while the nerve qualifying for the smaller impairment is rated at 50 percent.[11] The A.M.A., *Guides* further indicate that Table 15-23 is to be used for rating focal nerve compromise,[12] and Appendix 15-B provides further guidance regarding electrodiagnostic evaluation of entrapment syndromes.[13]

## ***ANALYSIS***

The Board finds that appellant has not met her burden of proof to establish more than eight percent permanent impairment of her left wrist, for which she previously received a schedule award.

In support of her claim appellant submitted a May 17, 2013 report by Dr. Goodman. Utilizing the sixth edition of the A.M.A., *Guides,* Table 15-3 (Wrist Regional Grid), page 395, Dr. Goodman calculated that appellant had a CDX of 0 and assigned a GMFH and GMPE of 1. He concluded that appellant had a net adjustment of 2 and a grade E impairment, equaling five percent permanent impairment of the left upper extremity.

---

[6] *K.H.*, Docket No. 09-341 (issued December 30, 2011). For decisions issued after May 1, 2009, the sixth edition will be applied. *B.M.*, Docket No. 09-2231 (issued May 14, 2010).

[7] Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6 (March 2017); *see also* Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

[8] A.M.A., *Guides* (6th ed. 2009) at 3, section 1.3, The International Classification of Functioning, Disability and Health (ICF): A Contemporary Model of Disablement.

[9] *Id.* at 411.

[10] *See R.V.*, Docket No. 10-1827 (issued April 1, 2011).

[11] *Supra* note 10 at 448.

[12] *Id.*

[13] *Id.* at 487-90.

In his September 15, 2016 report, Dr. Thompson provided physical examination findings and noted her prior history as set forth in the medical record, including the report of Dr. Goodman. He diagnosed status post left carpal tunnel release on October 12, 2009 with debridement of the scapholunate ligament and found that appellant suffered a fracture to the left wrist on September 21, 2004, resulting in surgery to repair the fracture. Utilizing Table 15-23 of the A.M.A., *Guides*, Dr. Thompson found that appellant's most impairing diagnosis was median nerve entrapment with a CDX of 1. He assigned a GMCS of 1 due to a conduction delay on electrodiagnostic studies, a GMFH of 1 due to intermittent symptoms, and a GMPE of 2 due to physical findings. Dr. Thompson concluded that appellant had a net adjustment of 4, equaling two percent permanent impairment of the left upper extremity.

In accordance with its procedures, OWCP properly referred the evidence of record to its DMA, Dr. Katz, who, in his reports dated March 22 and May 9, 2017, reviewed the evidence and determined that appellant's date of MMI was September 15, 2016, the date of Dr. Thompson's second opinion examination. Using the findings provided by Dr. Thompson's second opinion report, the DMA concurred that appellant's most impairing diagnosis was median nerve entrapment under Table 15-23, page 449, of the A.M.A., *Guides*. He also concurred with the GMCS of 1 due to electrodiagnostic studies with delay, a GMPE of 2 due to decreased sensation, and a GMFH of 1 due to mild intermittent symptoms. Using the net adjustment formula (GMFH-CDX) + (GMPE-CDX) + (GMCS-CDX), the DMA calculated that appellant had a net adjustment of (1-1) + (2-1) + (1-1) = 1, equaling a default grade C. Based on these calculations, the DMA concluded that appellant had two percent permanent impairment left upper extremity. He explained that since the present impairment was less than a prior overlapping award of eight percent permanent impairment of the left upper extremity.

The Board finds that the DMA applied the appropriate tables and grading schemes of the sixth edition of the A.M.A., *Guides* to Dr. Thompson's clinical findings. The DMA's calculations were mathematically accurate. There is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* demonstrating a greater percentage of permanent impairment. The DMA reviewed the medical evidence of record and explained that Dr. Goodman's impairment evaluation could not be considered probative for the purpose of recommending a schedule award under FECA because it lacked sufficient detail to permit assignment of an impairment rating on the basis of a records review. The Board has held that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides,* or does not discuss how he or she arrives at the degree of impairment based on physical findings, his or her opinion is of diminished probative value in establishing the degree of impairment such that OWCP may rely on the opinion of the DMA to apply the A.M.A., *Guides* to the findings reported by the attending physician.[14] The Board finds that OWCP's DMA in this case properly applied the standards of the A.M.A., *Guides*. The DMA's opinion represents the weight of medical evidence and OWCP properly relied on his assessment of two percent permanent impairment of the left upper extremity.[15]

[14] *See L.M.*, Docket No. 12-0868 (issued September 4, 2012); *John L. McClanic*, 48 ECAB 552 (1997).

[15] *See M.T.*, Docket No. 11-1244 (issued January 3, 2012).

OWCP's procedures provide that previous impairment to the member under consideration is included in calculating the percentage of loss, except when the prior impairment is due to a previous work-related injury, in which case the percentage already paid is subtracted from the total percentage of impairment.[16] Appellant previously received schedule award compensation for one percent permanent impairment of the left upper extremity under OWCP File No. xxxxxx002 and eight percent permanent impairment of the left upper extremity under File No. xxxxxx828. Thus, the Board finds that OWCP properly denied an increased schedule award.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

## ***CONCLUSION***

The Board finds that appellant has not met her burden of proof to establish more than eight percent permanent impairment of the left wrist, for which she previously received a schedule award.

## ***ORDER***

**IT IS HEREBY ORDERED THAT** the February 1, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2019
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

[16] *Supra* note 8 at Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.7.a(1)(a) (February 2013). *See W.M.*, Docket No. 14-0953 (issued August 13, 2014).